IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Kumbha Ram Beniwal

vs

State of Rajasthan & Ors.

S.B. CIVL WRIT PETIITON NO.3101/2001 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 22nd August, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.S.P. Sharma, Advocate, for the petitioners.
Mr.Narpat Singh, Advocate, for the respondents.

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BY THE COURT: -

In this writ petition, the petitioner has prayed for a direction to the respondents to appoint him on the post of Class IV employee pursuant to the selection made by their interview board on 30th July, 1998.

The facts of the case are that the petitioner was appointed on the post of 'Tameel Kuninda Daak' in the office of the Municipal Board, Barmer on 16.10.1995 on contract basis. Subsequently, he was again appointed on the said post on contract basis vide orders dated 17.7.1996, 21.4.1997, 6.5.1997 each time for three months only. His appointment was thereafter made on the post of 'Bhistee' again on contract basis by order dated 15.1.1999 on payment of monthly salary of Rs.990/. In this manner, the petitioner continued in the employment of the Municipal Board from 1985 to 1999. The State Government thereafter issued No objection certificate (N.O.C.) to the respondent no.2 (Executive Officer, Municipal Board, Barmer) to fill up vacant post of Class IV employees on regular basis on 25.9.1997. Accordingly, the Executive Officer called names of the persons from District Employment Exchange and simultaneously also published

an advertisement in the newspaper. The petitioner and several others applied in response to such advertisement. Six candidates in all were interviewed on 30.8.1998. Finally interview Board adjudged the petitioner suitable for appointment on post of Class IV employee in the pay scale of Rs.250-3200 on regular basis and his name for appointment against the vacant post. The respondent no.3 requested the Director, Local Self Department, Government of Rajasthan, Jaipur for approval who authorized respondent no.3 to appoint the petitioner as Class IV employee. In spite of that, the petitioner was not appointed. Hence, this writ petition.

The respondents have contested the claim of the petitioner. In their reply to the writ petition, they have asserted that appointment of the petitioner on the post of 'Tameel Kuninda Daak' and thereafter, 'Bhistee' was made on contract basis. So far as appointment on the post of Class IV is concerned, the respondents have denied that approval for appointment of the petitioner was ever received from the Director, Local Self Department, Government of Rajasthan, Jaipur. On the contrary, they

have stated that the Director, Local Body has not approved the selection made on 30th July, 1998. The D.L.R. By circular dated 25th July, 1998 required all Municipalities throughout state not to make any appointment on vacant posts of Class IV employees even if N.O.C. Was given by it in the past. Reason for this was abolition of octroi by government vide notification dated 31st July, 1998. This resulted into thousands of the employees being rendered surplus in the State. This letter was received by the office of Municipal Board, Barmer on 1st August, 1998. Merely because the petitioner was interviewed and selected, this did not confer any absolute right on his to seek appointment.

I have heard arguments of learned counsel for the parties.

Shri S.P. Sharma, learned counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court in Vijay Kumar Sharma & Ors. Vs. Chairman, School Service Commission & Ors reported in (2001) 4 SCC 289. In this case, the appellants had applied for appointment pursuant

to the advertisement and in the select panel that was prepared, the appellants no.1,3 and 4 were empaneled and appellant no.2 was not empaneled. As the appointment letters were not issued to the appellants, they filed a writ petition in the Callcutta High Court which was allowed by the Single Judge by order dated 22.12.1999. However in appeal, the Division Bench set aside judgment of the Single Judge. The Division Bench dismissed the writ petition on the ground that the vacancies which had been advertised were tentative and therefore, held that there being no vacancies, no direction could be issued for filling up the vacancies. When the matter was taken to Hon'ble Supreme Court, the learned counsel appearing for the official respondents stated that the life of panel of the general category has since been extended and further stated that there are vacancies and, therefore, the appellants no. 3 and 4 will be appointed against such vacancies, but in OBC category there were vacancies,yet appellant no.1 could not be appointed because life of panel was not extended and the panel was allowed to lapse. The Hon'ble Supreme Court in that background of the case directed that remaining appellant from OBC category should also be appointed.

Learned counsel for the petitioner also produced copy of the note-sheet of Municipal Board, Barmer. According to him it has been mentioned therein that the Chairman, Municipal Board, Barmer himself was competent to make appointment on the post of Class IV employee and direction has been received from the Director, Local Bodies to proceed at the level of Board itself. Learned counsel for the petitioner has also relied upon the Rule 10 of the Rajasthan Municipalities (Class IV) Rules, 1964, which provides that the nearest Employment Exchange should be asked to send panel of names of suitable persons at least five times the number of vacancies to be so filled. The Commissioner or the Chairman of a Board will then make appointment of the candidates considered suitable for appointment. Learned counsel for the petitioner has also relied upon judgments of this Court in (1) Satyapal Kaswan Vs.State of Rajasthan reported in 2005(3) CDR 2410(Raj.), (2) Mohan Singh Vs. Union of India & Anr. reported in 2005(3) CRD 2237 (Raj.) and (3) Jagdish Chandra Vs. State of Rajasthan & Ors reported in 2006(1) CDR 171 (Raj.).

On the other hand, Shri Narpat Singh, learned counsel for the respondent has refuted the claim of the petitioner by arguing that the Director, Local Bodies has never issued any approval of the selection made by the Board. He has argued that the order of the Director dated 25th Sept., 1996 relied upon by the petitioner was issued prior to abolition of octroi by Government notification dated 31.7.1998. Immediately after abolition of octroi duty, the Director, Local Bodies issued a general circular to all the Municipalities in the State requiring them not to fill up any vacancy of Class IV employees. It was also stated therein that even if any no objection certificates had been issued and even if recruitment had been made pursuant thereto but appointments were not made so far, such no objection certificates except in the case of appointment of Sweeper should not be acted upon and no appointment be made on the post of Class IV employees. Learned counsel for the respondent therefore argued that this order was received in the Board on 1st August, 1998 and by that time, appointment order was not issued in favour of the petitioner therefore the selection was abandoned. He has relied upon a judgment of the Hon'ble Supreme Court in Karnataka

State Road Transport corporation & Anr. Vs. S.G. Kotturappa & Anr. Reported in (2005) 3 SCC 409.

It may be true that the petitioner was selected pursuant to the selection process initiated by the respondents and no objection certificate was also granted by the Director, Local Bodies and his appointment was also made in accordance with Rule 10 of the Rules of 1964, but mere fact of selection of the petitioner does not give him any right to claim appointment. A bare perusal of the order-sheet drawn by the Chairman would show that the Chairman had received directions from the Director, Local Bodies not to appoint any Class IV Employees. The respondents have come out with the plea that on 1st August, 1998 they received a circular requiring them not to act upon such N.O.C. on the basis of which the process of recruitment was initiated. The judgments cited by the learned counsel for the petitioner turned out on their own facts and in none of them it was held that mere selection would confer any right upon the candidates to seek writ of mandamus. On the contrary, there are catena of judgments wherein it has been held that mere placement of

the name in the select list does not confer any right on the candidate to seek mandamus for his appointment.

In view of the above discussion, the present writ petition is dismissed with no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-